[CHAPTER 7]

Enforcing Pesticide Laws

DPR regulates pesticides under a comprehensive program that encompasses not only enforcement of pesticide use in agricultural and urban environments, but also prevention of environmental contamination, protection of workers, endangered species protection, and community relations. While the U.S. EPA promulgates minimum pesticide requirements, California's regulations are far more comprehensive. They include site-specific local permitting by the County Agricultural Commissioners (CACs) for use of restricted pesticides; periodic on-site observations by commissioners of application sites both before and during use; full documentation and reporting of agricultural pesticide use; post-use residue monitoring of treated commodities; and field worker safety inspections. These programs have evolved through legislation, regulation, and policy to provide an unparalleled level of protection for California's citizens and the environment from the potential harmful effects of pesticide use.

We consider persuasion a better enforcement method than threats, though at times prosecutions are necessary. It is our aim to have an efficient rather than a menacing force.
– 1936 Department annual report

Organization and Jurisdiction

DPR oversees a multi-tiered enforcement infrastructure. The Department is vested with primary responsibility to enforce pesticide laws in California, and the Pesticide Enforcement Branch and the Pest Management and Licensing Branch work with the County Agricultural Commissioners to enforce state pesticide laws and regulations.

Pest Management and Licensing Branch, among other duties, administers the licensing and certification program for pest control advisers, pest control applicators, pest control aircraft pilots, pest control businesses, pest control dealers, and pesticide brokers.

The Enforcement Branch supervises and evaluates the commissioners' enforcement programs; monitors pesticide products for compliance with labeling and sales requirements; conducts an extensive pesticide residue monitoring program for fresh produce; imposes sanctions for violations of pesticide laws and regulations; and conducts federal (U.S. EPA) inspections of pesticide producers.

The Enforcement Branch oversees three regional offices in Anaheim, Fresno, and West Sacramento. The regional offices provide supervision, training, coordination, and technical support to the county enforcement programs. Regional office personnel evaluate county programs through in-depth records inspections to identify the number and type of inspections, completeness of permits, accuracy and thoroughness of investigations, appropriateness of enforcement actions, and adequacy of other aspects of their enforcement program. Regional office staff also provides training to CAC staff, and guidance on policy and regulatory issues.

There are two additional elements of pesticide regulation that DPR does not directly administer, although the CACs have varying degrees of involvement with these local programs. The Structural Pest Control Board (SPCB), within the State Department of Consumer Affairs, administers licensing of structural pest control businesses and structural applicators. The CACs carry out local enforcement activities for structural pest control applications. DPR and SPCB have a memorandum of understanding (MOU) that guides the interactions of the respective programs. DPR registers pesticides and devices used in structural pest control. *(See Chapter 3 for discussion of the registration process.)* SPCB enforces licensing provisions and ensures consumer protections. The Department of Health Services (DHS) oversees the activities of local vector control agencies, and DPR and DHS have an MOU that covers mutual areas of interest regarding vector control practices.

In addition to the layers of jurisdiction in California, there are jurisdictional roles played out at the international border. The citizens of the United States and Mexico work and live in close proximity along the California-Baja border. Likewise, pesticide use occurs on both sides of the border and affects the citizens of both countries. Farmers own property and apply pesticides on both sides of the border. Pesticides may be purchased in one country and used in another, both legally and illegally. Pesticide users and farm workers may work on one side of the border and live on the other, and problematic pesticide applications may occur on either side of an international boundary.

DPR participates in two federal border projects. The first is the Pesticide Emergency Response Plan, a U.S. EPA-funded project that identifies individuals and agencies responsible for initial emergency response and investigation of pesticide incidents along the California/Mexico border. The second is the U.S./Mexico Pesticide Information Exchange Project, funded by U.S. EPA to cooperatively address common pesticide issues along the entire border. In 2000, DPR received funding to consolidate its state and federal pesticide border projects and to establish the position of a DPR Border Issues Manager, who serves as a single point of contact for pesticide enforcement issues involving the border region.

Enforcement Authority

As far back as 1917, pest control businesses were required to get a certificate of qualification to provide services.

In 1972, amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) granted U.S. EPA primary authority to regulate pesticides in the United States. The amendments also gave U.S. EPA authority to delegate pesticide enforcement authority to states by entering into cooperative agreements with state pesticide regulatory programs. Under these agreements, states are authorized to train their personnel to enforce pesticide laws, and to develop licensing, certification and training programs for applicators of restricted-use pesticides. The amendments also authorized U.S. EPA to pay certain costs associated with these enforcement and training programs, subject to the state providing a certain percentage of matching funds. In 1975, after more than a year of negotiation, U.S. EPA signed its first cooperative agreement for pesticide enforcement — with California. The agreement served as a model for future state agreements of its type. With this agreement in place, a state has primary enforcement responsibility for pesticide use violations.

Before being allowed to train and certify applicators, a state must submit a detailed plan to U.S. EPA describing its authority and capabilities to carry out the program. Before U.S. EPA approves a plan, the state must adopt adequate laws and regulations to meet the minimum standards under FIFRA, including certification and record-keeping requirements for pesticide applicators; the inspection of establishments where pesticides are held for distribution or sale; and enforcement of pesticide labeling. U.S. EPA accepted California's plan for the certification of commercial and private pesticide applicators in 1980. California has consistently maintained primary enforcement responsibility for pesticide use violations within the State from that time.

Licensing and Certification

The Pest Management and Licensing Branch administers the Department's Licensing and Certification Program. This program examines and licenses commercial pest control applicators, aerial applicators, pesticide dealers and brokers, and pest control advisers; and certifies pesticide applicators who use or supervise the use of restricted pesticides. The purpose is to ensure that persons selling, possessing, storing, handling, applying, and recommending the use of pesticides are knowledgeable in their safe use. Such licenses and certificates cannot be renewed unless the holder has completed certain minimum continuing education hours related to pesticides or pest management within each two-year license or certificate period.

In addition, pest control businesses, agricultural pest control advisers, and pest control aircraft pilots must register with each county in which they operate. The law provides that the commissioner may revoke for cause any registration to work in that county.

As far back as 1917, pest control businesses in California were required to obtain a certificate of qualification from the County Agricultural Commissioner. In 1947, newly

developed herbicides caused problems when drift occurred and crops in nearby fields were damaged. In response, the Legislature in 1949 enacted two laws (Chapter 1043 and Chapter 1294) that required professional agricultural applicators and pilots be licensed by the California Department of Agriculture (CDA), with registration required in the county of operation. The new laws also required licensees to keep certain records of applications and report information to the commissioner. With passage of this statute, regulation of professional applicators moved from the county level to become a responsibility shared by the State and the County Agricultural Commissioners. The law was specific in its requirements: "Applicants must indicate the specific type or types of agricultural pest control which they consider they are qualified to perform, and must submit a statement of their experience in that field. The law requires that each applicant must also satisfy the department of his character, qualifications, responsibility and good faith in seeking to carry on the business of agricultural pest control. . . . Qualifications of the applicant to conduct the type or types of business described in the application were determined from an agricultural commissioner familiar with his operations or by interview and oral examination conducted with the commissioner of his county of residence."

In 1950, the first year licenses were required, 913 were issued, the largest number — 128 — in Los Angeles County, followed by 67 in Fresno County, 64 in Tulare, and 58 in San Bernardino. With licensing came training on how to use the new, more powerful pesticides. In its 1950 annual report, CDA noted that "the need for information with regard to agricultural chemicals and pest control, expressed by agricultural pest control operators and agricultural aircraft pilots, led to presentation of a 'short course' by the University of California in February. Over 500 persons attended the three-day session, and heard experts discuss citrus pest control, soil fumigation, pest control in deciduous orchards, pest control laws and safeguards, weed and rodent control, pest control for truck and garden crops, and agricultural use of aircraft."

Legislative investigations had indicated the need for more stringent control over the use of injurious pest control materials which might drift and thereby present a serious hazard to persons, animals, and crops.
– 1950 Department annual report

The new statutes also required CDA to adopt rules and regulations governing the use of "injurious materials" and "injurious herbicides." In response, CDA adopted regulations in 1950 that established the restricted material classification system. Placed in this category were 2,4-D, parathion, TEPP, calcium arsenate, lead arsenate, and copper acetoarsenite. The regulations also governed nozzle sizes, wind velocities, distances from susceptible crops and other factors "involved in limiting drift of these chemicals onto susceptible crops on properties other than those being treated." The regulations required applicators to obtain permits to use these potentially harmful pesticides and to take "certain precautions . . . to prevent injury to persons, valuable plants, and animals (including honeybees)."

In 1971, legislation (Chapter 1276) was passed to upgrade the professionalism of persons making agricultural pesticide use recommendations by, among other things, requiring the licensing of agricultural pest control advisers.

At the federal level, the 1972 amendments to FIFRA prompted further changes in the pest control licensing program. Congress recognized that some chemicals, while too dangerous for general use, could be used safely with training and gave U.S. EPA the flexibility to regulate pesticides beyond the choice of either registration or cancellation. U.S. EPA classifies pesticides into either general or restricted categories, with the latter group available only to "certified applicators." U.S. EPA prescribed certification standards and allowed states such as California to set up their own U.S. EPA-approved training programs.

In 1976, California incorporated the federal certification requirement for pesticide applicators. Other categories of licenses and certificates were set up, requiring different levels of training and expertise depending on the kind of pesticides handled and the degree to which a person used pesticides in their work. The State plan also provided for the certification of growers who apply federally restricted pesticides. This was done through the existing State restricted material permit process. U.S. EPA accepted California's plan for certification of commercial and private pesticide applicators in 1980.

In 1993, the Legislature (Chapter 1176, AB 770) expanded the State's regulatory licensing requirements to include all persons who sell or distribute any pesticide

products registered by DPR and labeled for agricultural use in California. Under this statute, the person that first sells a pesticide into or within the State, whether the registrant, a pesticide broker, or a pesticide dealer, is responsible for paying the mill assessment (an assessment based on pesticide sales, *see Chapter 15, Funding*). The bill created a new license category for pesticide brokers, requiring them to possess the appropriate DPR license to conduct business with or within California. The law also made it unlawful to purchase a pesticide labeled for agricultural use except from a person licensed as a pest control dealer or broker.

In 1999, DPR adopted regulations that require prospective agricultural pest control advisers (PCAs) to take more college courses related to integrated pest management and sustainable agriculture. The Department licenses PCAs to offer recommendations to farmers and others on agricultural pest control. Upgrading the PCA educational requirements was first suggested in 1994 by DPR's Pest Management Advisory Committee. The committee concluded an upgrade was necessary if PCAs were to produce recommendations that incorporate reduced-risk pest management strategies. The new requirement goes into effect for PCA licenses issued after December 31, 2002.

California's restricted materials permit program is the only one of its kind in the country.

Restricted Materials and Permitting

In 1976, the State Attorney General issued an opinion that the pesticide regulatory program had to comply with the California Environmental Quality Act (CEQA) when registering a pesticide or granting a license, permit or certificate. In other words, CEQA required the Department to prepare an environmental impact report (EIR) before registering a pesticide or issuing a permit to use a restricted pesticide. After a specially-convened Environmental Assessment Team determined this was not feasible, legislation was passed (Chapter 308, Statutes of 1978, AB 3765) that provided for an abbreviated environmental review as the functional equivalent to a full-scale EIR. The legislation noted that timeliness in the application of pesticides is paramount to good pest management and that individual permits to apply pesticides must often be issued on short notice, thereby making impractical the lengthy environmental review required in the preparation of an environmental impact report or negative declaration. Among other things, the legislation led to the Department's development of regulations which expanded the scope of the permitting system and placed new responsibilities on the County Agricultural Commissioners.

As a practical matter, the legislation meant that the state pesticide regulatory agency and the County Agricultural Commissioners did not have to prepare an EIR on each activity they approved. However, documentation of environmental impacts, mitigation measures, and alternatives was required.

The criteria to designate a pesticide as a restricted material in California include hazards to public health, farm workers, domestic animals, honeybees, the environment, wildlife, or crops other than those being treated. DPR gives pesticides a restricted designation through regulation. All federally restricted-use pesticides are designated as restricted materials in California by reference in regulation. In addition, California has additional pesticides that DPR has designated as restricted-use. DPR may propose pesticides for designation as restricted materials at any time, often based on a review of data submitted by registrants or information derived from field studies or incident investigations. (For example, pesticides found in ground water from routine agricultural use are designated restricted materials to allow for greater local control over their use.)

DPR designed the restricted material permit program to accommodate widely divergent local needs. Before a farmer or pest control business can buy or use a restricted material (whether federally restricted or California-restricted only), they must be certified by DPR, that is, they must have had specified training in handling and using pesticides. In addition, to buy or use a California-restricted pesticide, a person must obtain a permit from the County Agricultural Commissioner. (Most pesticide products are not restricted materials, and persons using nonrestricted pesticides are not required to obtain a permit.)

The regulations require the CAC to determine if a substantial adverse health or environmental impact will result from the proposed use of a restricted material. If the CAC determines that this is likely, the commissioner may deny the permit or may issue

it under the condition that site-specific use practices be followed (beyond the label and applicable regulations) to mitigate potentially adverse effects. DPR — relying on its scientific evaluations of potential health and environmental impacts — provides commissioners with information in the form of suggested permit conditions. DPR's suggested permit conditions reflect minimum measures necessary to protect people and the environment. The commissioners use this information and their evaluation of local conditions to set site-specific limits on applications. To maintain CEQA equivalency, CACs must have flexibility to restrict use permits to local conditions at the time of the application. Therefore, the commissioners may follow the DPR-provided guidelines, or may structure their own use restrictions.

Permits to apply restricted materials are the functional equivalent of environmental impact reports; therefore, they must be site- and time-specific. The site can be clearly described when the permit is issued. However, since permits are issued for a 12- or 24-month period, and it is not possible to schedule the time of application months in advance, time-specificity is achieved by the grower filing a "notice of intent" (NOI) to apply the pesticide. The NOI must be submitted to the commissioner at least 24 hours before the scheduled application. The notice must describe the site to be treated and the pesticides to be applied. It must also contain information on any changes in the environmental setting (for example, construction of residences or schools, changes in types of crops to be planted) that may have occurred since the permit was issued. This notice allows the commissioner an additional opportunity to review the planned application, and apply additional restrictions if needed.

Agricultural commissioners have the option of issuing multi-year permits to perennial agricultural plantings (such as fruit trees or grapevines), nonproduction agricultural sites, and nonagricultural sites. However, the permittee must immediately notify the commissioner of any changes in the information on the permit (for example, a change in the kind of crops planted, or a newly constructed labor camp or home nearby).

County staff review notices of intent and can halt the proposed application if conditions warrant. County staff make pre-application inspections on at least 5 percent of the use sites identified by permits or notices of intent. These are primarily spot checks to ensure that information contained on the permit is accurate.

Laws cannot be most effectively enforced without a certain amount of educational work and even investigation must at times be undertaken....
– 1923 Department annual report

Cooperative Agreement with U.S. EPA

DPR's comprehensive enforcement program includes a federal component administered through a cooperative agreement with U.S. EPA. This program includes compliance monitoring and compliance assistance (outreach) elements that focus on pesticide applicators and workers in various settings. The purpose of compliance monitoring is to find out whether pesticide applicators follow pesticide labeling and regulatory requirements, and take appropriate enforcement action for violations found. Compliance monitoring by DPR staff does not result in direct enforcement action, but may trigger followup inspections. Compliance assistance is designed to provide information to pesticide users and workers on regulatory requirements addressing worker protection, endangered species, ground water and restrictions on use.

Information is also provided on safe handling procedures, and how to properly store, transport and dispose of pesticides. Increasing the knowledge of pesticide users and workers will increase compliance and reduce the risk of pesticide exposure to the public, workers and the environment.

Each year DPR identifies State priorities and reviews the cooperative agreement program to assure its activities incorporate U.S. EPA's national priorities. These priorities may include the monitoring of pesticide applications near residential areas, hospitals, schools, waterways, endangered species habitat, farm labor camps, parks and certain crops. They also may include the monitoring of pesticides falling under new regulatory requirements (e.g., worker protection), or "special chemicals" identified by federal or State regulatory agencies. Examples of special chemicals include those regulated as minimal exposure pesticides, pesticides undergoing California or federal review, or pesticides that have been canceled or suspended. DPR and U.S. EPA, Region 9, then negotiate an agreement to administer and carry out a work plan that addresses these mutual priorities.

To carry out the work plan, DPR initiates a schedule of both compliance monitoring and compliance assistance activities. Compliance monitoring activities specify types of inspections conducted under the cooperative agreement. These inspections include those conducted at pesticide producing establishments, and retail and wholesale market sites. Pesticide dealers who sell restricted materials, pesticide users, and licensed or certified pesticide applicators are also subject to inspection and monitoring activities. In addition, DPR conducts inspections at federal facilities including military bases, national parks and wildlife refuges.

DPR has a strong commitment to providing compliance assistance to the regulated community through outreach activities. DPR and CAC staff regularly present information to trade or industry groups such as the California Agricultural Production Consultants Association, California Agricultural Aircraft Association, Pest Control Operators of California and other industry associations.

County Pesticide Use Surveillance

Beyond administering the restricted materials permitting system, the County Agricultural Commissioners enforce other State laws and regulations relating to pesticide use at the local level.

The commissioners:

- inspect the operations and records of growers, pest control businesses, pesticide dealers, and agricultural pest control advisers;
- register licensed pest control businesses, pest control aircraft pilots, and agricultural pest control advisers (these businesses and individuals must obtain statewide licenses from DPR, and register in each county where they operate);
- conduct pesticide incident and illness investigations;
- take enforcement action (including levying fines and penalties) if violations are found; and
- provide training to pesticide users.

(A broader discussion of the wide range of CAC duties and responsibilities can be found on the opposite page.)

Many California farmers rely on trained operators to apply pesticides for them. This employment trend has increased as modern agriculture has found need for expensive application equipment, such as aircraft, to provide effective and economical pest control. Furthermore, many of the modern pesticides are dangerous to handle and farmers prefer to hire trained and properly equipped operators to apply the chemicals for them.
– 1958 Department annual report

Enforcement and Compliance Options

The legal authority for the pesticide regulatory program is found primarily in Divisions 6 and 7 of the Food and Agricultural Code. These legal provisions and the regulations adopted pursuant to them give DPR, the CACs, or their respective representatives, broad authority to access private property for enforcement activities such as audits, inspections, investigations, sampling, or testing. These laws also authorize DPR and the CACs to discipline violators through various types of sanctions and to protect the public by prohibiting or stopping hazardous activities.

Enforcement tools include:

- Administrative civil penalties initiated by a CAC or by DPR;
- Refusal, revocation, or suspension of county registrations or licenses and certificates issued by DPR and a CAC;
- Civil and criminal court actions initiated by DPR (through the Attorney General) or local prosecutors;
- Cease-and-desist orders issued by DPR or a CAC;
- Seize/hold produce orders issued by DPR (to place a hold on agricultural commodities that exceed pesticide tolerances);
- Crop abatement orders issued by DPR (allows the destruction of agricultural commodities that exceed pesticide tolerances);
- Crop seizures issued by DPR (allows seizure and destruction of agricultural commodities or sites treated with a pesticide not registered for use on that commodity or site); and

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The County Agricultural Commissioners

The size and diversity of California agriculture dictate a much more complex partnership between State and local pesticide regulatory authorities than anywhere else in the nation. DPR works closely with California's County Agricultural Commissioners (CACs), who serve as the primary enforcement agents for State pesticide laws and regulations.

The Boards of Supervisors have appointed County Agricultural Commissioners in all the state's 58 counties to direct offices staffed by county employees. (A handful of small counties share commissioners, so there are actually fewer than 58 CACs in the state.) CACs receive State as well as county funding, and they enforce State laws and regulations that cover environmental protection, pest prevention, worker and consumer protection, and a variety of special services.

Although State law offers various enforcement options to CACs, the commissioners often encourage compliance through educational programs. These may include informal or formal compliance actions (such as warning letters), corrective interviews, presentations to community and industry groups, and training sessions for pesticide users.

Farmers must obtain site-specific permits from their CAC to purchase and use many agricultural chemicals. The commissioner must evaluate the proposed application to determine whether it is near a sensitive area, such as wetlands, residential neighborhoods, schools, or organic fields. State law requires commissioners to ensure that applicators take precautions to protect people and the environment. Based on this evaluation, the CAC may deny the permit or require specific use practices to mitigate any hazards. For example, a permit may be contingent upon the method of application, time of day, weather conditions, and use of buffer zones. When such permit conditions are in place, they have the force of regulation and are strictly enforceable.

Part of the commissioner's duty in issuing a permit is to decide the need for a particular pesticide and whether a safer pesticide or better method of application can be used and still prove effective. CACs regulate pesticide use to prevent misapplication or drift, and possible contamination of people or the environment. CAC staffs also enforce regulations to protect ground and surface water from pesticide contamination, and they may work with regional water boards and the State Water Resources Control Board. Some CACs serve as air pollution control officers for their counties.

Among a CAC's most important responsibilities is the investigation of pesticide-related illnesses and injuries. All reported pesticide-related illnesses and injuries are investigated by the commissioner in the county in which the illness occurred. CAC staff interview the victims and employer, if the illness occurred on the job. If violations of pesticide law or regulations are found to have contributed to an illness, the commissioner takes enforcement action. If a crop or structure is contaminated during an incident, a CAC biologist takes residue samples for laboratory analysis. Commissioners can quarantine a crop that contains illegal pesticide residues.

In most counties, the CAC is the first contact on any farm-related issue. Commissioners enforce many laws administered by the California Department of Food and Agriculture (CDFA), including those related to pest detection and exclusion and to quality standards for fruits and vegetables. CDFA also provides biological control organisms that commissioners may use to solve persistent pest problems. Additionally, CACs work with the State Department of Fish and Game to prevent agricultural runoff into wildlife areas and similar problems.

Although they are called "agricultural" commissioners, CAC duties range far beyond the farm gate. For example, CAC employees check maintenance gardeners to ensure they are licensed to apply pesticides, and that their pesticides are labeled for professional landscaping. CAC biologists inspect home pesticide applications, such as structural fumigations for termites, and check structural pest control employees for proper training and equipment.

Since many pesticides are used in non-agricultural settings — sanitizers in municipal water treatment plants, disinfecting chemicals in food service facilities and hospitals — pesticide laws may overlap other areas where workplace safety is involved. Therefore, CACs may also work with the State Departments of Industrial Relations and Health Services. Commissioners also consult with the State Department of Forestry about pesticide use on forest lands.

Outside the pesticide arena, County Agricultural Commissioners have responsibilities including:

- Sampling imported produce at airports, seaports, and post offices for exotic pests such as the Mediterranean fruit fly. Also checked are shipments of nursery products from areas that may harbor unwanted pests.
- Inspecting nurseries and seed producers to check the viability of rootstock and seed, and inspecting beehives for disease and pest infestations.
- Checking for insect damage, rot and decay at packing stations; inspecting grapes, citrus, and other fruit for sugar content.
- Enforcing the state's organic food laws, and overseeing certified farmers' markets in their counties.
- Preparing an annual county crop report with statistics used by universities, agricultural organizations, lending institutions, and others.
- Conducting weights and measures programs. All but four commissioners also serve as county sealers, who check supermarket scales and gasoline pumps for accuracy.

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- Prohibit harvest orders issued by DPR or a CAC (delays harvest until the expiration of a pesticide label preharvest interval or until produce does not carry pesticide residue in excess of tolerance).

Administrative actions: DPR can refuse, revoke or suspend the right of a pest control operator's or maintenance gardener's business license to perform pest control, and a pesticide dealer's business license to sell pesticides. Pest control advisers, licensees and certificate holders who use pesticides are also subject to these administrative actions.

County Agricultural Commissioners have the authority to refuse, revoke or suspend the registrations of pest control operators and maintenance gardeners to use pesticides and that of pest control advisers to make pesticide recommendations. In 1984, commissioners were granted authority to levy structural pest control civil penalties. As an agent of the Structural Pest Control Board, commissioners may fine any structural pest control licensee up to $1,000 per violation of pesticide laws in the Food and Agricultural Code or the Business and Professions Code. Commissioners may also suspend the right of a structural pest control licensee to perform work in their county for up to three days.

In 1985 (Chapter 943, AB 1614) commissioners were granted authority to levy agricultural civil penalties. Commissioners may fine any pesticide user, adviser, or dealer up to $1,000 per violation of specified sections of the Food and Agricultural Code. In 2000, commissioners were given the authority to refuse, suspend or revoke permits of individuals who disregard fines or lawful orders (Chapter 806, SB 1970).

In 1989, DPR was granted limited authority to levy civil penalties (Chapter 843, AB 1873). DPR's authority at that time was restricted to violations of law prohibiting the sale of unregistered or mislabeled pesticides, and those prohibiting the packing, shipping or selling of produce containing illegal pesticide residues. In 2000, legislation (Chapter 806, SB 1970) expanded that authority to allow DPR to levy civil penalties for serious cases resulting from priority investigations or multi-jurisdictional violations that cannot be handled by a single CAC. DPR-imposed civil fines can range as high as $5,000 per violation.

In 1993, legislation (Chapter 848, AB 774) made it a crime for a grower to knowingly treat a commodity or crop with a pesticide that had been stolen or illegally obtained. Violators are subject to a fine of $10,000 plus one-half the value of the crop to which the illegal pesticide was applied. In addition, the law provided that DPR licensees found to have knowingly sold, applied, or provided stolen pesticides shall have their license suspended for at least 18 months.

If DPR and County Agricultural Commissioners believe civil penalties are not warranted, they have an option of obtaining compliance through violation notices, compliance interviews, and warning letters. These less severe actions are generally used to document first-time, nonsubstantive violations. In addition, they can issue "cease and desist" orders to halt activities that may create a hazard involving the use of pesticides in violation of laws or regulations.

Criminal and civil actions: Criminal and civil actions can be taken against licensees, certificate holders, permittees, and other pesticide users. These actions can also be taken against pest control advisers, sellers and manufacturers of pesticides. Civil actions can be filed by the State Attorney General or a county district attorney. Criminal penalties range from a minimum of $500 and/or not more than six months of imprisonment, to $50,000 and/or imprisonment of one year for offenses involving intentional or negligent violations that created a hazard to human health or the environment. Civil complaints can be filed only by the State Attorney General. Penalties range from $1,000 to a maximum of $25,000. Criminal and civil proceedings are considered instead of agricultural or structural civil penalties for repetitive or intentional violations, or violations that have created a hazard to human health or the environment.

Crop Quarantine, Crop Abatement, Crop Seizure: DPR may quarantine and hold any lot of produce that contains pesticide residues in excess of the federal allowable levels. The owner of the produce has the option of reconditioning the produce to remove the illegal residues. If the illegal residues cannot be removed, the produce cannot be sold. In addition, DPR is authorized to seize lots of produce based on a suspicion they contain illegal pesticide residues. The produce is then laboratory-tested and, should

DPR issues these types of professional licenses to individuals and businesses that apply, sell or recommend pesticides.

Individuals

- Agricultural Pest Control Adviser License
- Qualified Applicator Certificate
- Qualified Applicator License
- Pest Control Dealer Designated Agent License
- Pest Control Aircraft Pilot Certificate

Businesses

- Maintenance Gardener Pest Control Business License
- Pest Control Business License
- Pest Control Dealer License
- Pesticide Broker License

illegal residues be present, the seizure is maintained. Should a residue of an unregistered pesticide be found on a crop in the field, DPR can prohibit the harvest, and in some cases order the crop destroyed. DPR also may order a crop or commodity destroyed or prohibit harvest of a crop treated with a pesticide not registered for use on the crop or commodity even though no residues are found, if the presumptions are not rebutted that the treated crop or commodity presents a health or environmental hazard, or the pesticide was used to gain an unfair business advantage.

Improving Enforcement

In 1992, DPR and the County Agricultural Commissioners began working together on developing uniform enforcement guidelines, which were finalized in 1994. The guidelines acknowledged the necessity of a uniform enforcement response policy while maintaining the ability to recognize local conditions in decision making. Under the guidelines, violations of the State's pesticide regulations have been categorized as minor, moderate, or serious violations. Minor violations primarily involve paperwork oversights. The stiffest penalties have been reserved for violations classified as serious. These are violations of laws that protect health, property or the environment and may involve restricted material permits, licensing, and worker or public safety.

Violations are categorized and then assessed using a decision tree to determine an appropriate response or option. Since the decision tree takes the violator's compliance history into account, more violations prompt more severe action. To achieve statewide consistency, counties must use these guidelines for each incident. If a county's response differs from the guidelines, a written decision report must be prepared that describes the factors that influenced the alternate decision.

In 1994, DPR and the commissioners began a program to target county enforcement on activities that directly protect worker and public health and the environment. Each county has a negotiated work plan that gives the highest priority to such enforcement activities as worker protection inspections, illness investigations, applications of certain high-toxicity pesticides, and agricultural applications near parks or schools. Lower priority is given to activities like routine inspections of growers or businesses with no recent violations. The commissioners focus on inspections in areas where there has been a history of problems or potential for problems. This planning process is conducted each year, allowing DPR and the commissioners to continually evaluate program priorities.

Enforcement Initiative: In response to a Cal/EPA-wide directive, the Department in mid-1999 began an in-depth assessment of its enforcement program. The directive noted Cal/EPA's commitment to implement its "stringent environmental standards resolutely, but equitably," and asked that each Cal/EPA entity examine the structure and conduct of compliance and enforcement activities.

In July 1999, DPR convened a team of Department staff and CAC representatives to review the means used by the Department and the CACs to maintain compliance by the regulated community, and examine the kinds of enforcement actions taken by DPR and the CACs. As part of this effort, input was solicited from representatives of production agriculture, the pesticide industry, public interest groups, and farm labor and other interested parties.

The team's report recommended a variety of changes in policy, procedures, regulations, and statutes. The Department in early 2000 began implementing several action items, including expanding resources for compliance assessment and county supervision; initiating a drift control initiative; improving enforcement planning and evaluation; and enhancing State and county authority. Fulfilling the challenges presented by the scope of the recommendations was expected to take several years.

Compliance Assessments: In 1997, the Department began a Compliance Assessment Program to perform on-site field evaluations of pesticide users to assess the degree of compliance with certain, predetermined requirements of the Food and Agricultural Code. Enforcement Branch staff conduct compliance assessments by observing specific aspects of pesticide use in field situations and by documenting pesticide user compliance with requirements. DPR and the CACs use this information to identify program strengths and weaknesses, plan focused inspections, design outreach programs, make programmatic and policy changes, and modify annual work plans.

Consistent enforcement of good laws and regulations is in many ways an aid to legitimate business.
– 1938 Department annual report

DPR uses compliance assessment data to evaluate the effectiveness of laws, regulations, and label requirements. CACs also use the data to identify statewide trends, target enforcement activities, and evaluate county pesticide use enforcement priorities.

Effectiveness Evaluations: As part of the process of reimbursing CACs for local enforcement costs, Enforcement Branch staff conduct midyear and annual effectiveness evaluations of all County Agricultural Commissioners' offices and staff. The program provides evaluations for major elements of the county's program, describes successful program aspects, and follows up with CACs on needed improvements. The evaluations consider financial reports, adherence to enforcement guidelines, enforcement action appropriateness, investigation quality and timeliness, restricted material permit accuracy, business registration and license records, and inspection quality.

County evaluations are part of DPR's supervision and support function. Evaluations are used not only to determine reimbursement to counties for program costs, but also to identify and document areas of program strengths and deficiencies. Enforcement Branch staff discusses these program areas with each CAC. Redirection or focusing of resources is the desired result if program deficiencies are found. Regional Office liaisons work with CACs to carry out these program changes.

Enforcement Database: In 1997, the Department received legislative funding to create a statewide enforcement database. The project was initiated primarily as an enforcement tool to track and review the compliance history of licensees before approving or renewing a State pesticide license. *(For more information on the database, see Chapter 14.)*

Law enforcement which is the result of intelligence and integrity is permanent.
– 1938 Department annual report

Product Compliance Program

Product registration enforcement began in 1911 with a pesticide product quality program, when truth-in-labeling laws were in their infancy and adulteration and misrepresentation of products were common. A 1935 department description of the program served to describe it for many years to come: "The work includes the inspection, sampling, and analyzing of all substances under (DPR's) supervision. Many thousands of inspections take place on dealers' shelves, in warehouses, and frequently in the hands of actual purchasers or users in order to determine whether all materials are registered and properly labeled. Official sampling of registered materials is carried on throughout the State. These samples are analyzed and, if the results do not conform to the guarantee, the registrant is dealt with according to the provisions of the California statutes . . . "

Over the decades that followed, modern manufacturing techniques reduced and then virtually eliminated product adulteration and contamination. As a result, in the 1990s, DPR reduced the scope of its product monitoring program as well as the Federal Product Compliance Monitoring Program it had also administered in California. The new program, administered under a cooperative agreement with U.S. EPA, is called the Product Compliance Program (PCP).

Monitoring activities for PCP include inspections of facilities where pesticidal products are manufactured, prepared, processed, packaged, repackaged, labeled, or relabeled. These "establishment inspections" may also be conducted at facilities where records are held by registrants. Marketplace surveillance inspections are also included in PCP compliance monitoring activities. Marketplace sampling sites include government agencies; retail and wholesale nurseries, hardware, home and garden centers; landscape material suppliers; agricultural chemical dealers; feed, farm and pet stores; beauty and barber suppliers; medical, dental, and veterinary suppliers; industrial and institutional suppliers; restaurant and hospital suppliers; grocery and drug stores; pool and spa centers; marine supply dealers; or any other site where pesticides are sold.

Pesticidal product samples may be collected during establishment or marketplace inspections and are submitted to the CDFA Center for Analytical Chemistry to compare the percent of active ingredient in the container with the formulation declared on the label, and to check for possible product contamination.

Additional monitoring may be conducted focused on compliance with State pesticide laws and regulations. These are limited to activities related to evidence collection in pesticide exposure, crop damage, or crop loss investigations; follow-up investigations to formal complaints; and environmental effects studies.

Enforcement Branch inspectors conduct pesticide registration monitoring to ensure that products offered for sale in California are registered with DPR. Pesticide Registration Branch assists by confirming the product's licensing history and providing up-to-date label information. The sale and use of unregistered (and therefore potentially unreviewed) products could result in adverse health effects or crop loss due to lack of efficacy.

Enforcement Branch inspectors also monitor to ensure products meet federal criteria for child-resistant packaging and that labels contain all necessary information, particularly requirements resulting from the federal Worker Protection Standard. Other important program activities include assisting retailers who may not be familiar with pesticide laws and regulations and investigating unregistered pesticide product complaints by citizens, competing manufacturing firms, and government agencies.